

**NUNC PRO TUNC****AUG 15 2008****FILED****AUG 27 2008**CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY **KMH** DEPUTY

James-Francis: Murphy  
In Care of Postal Department 234277  
Encinitas, California 92023-4277  
Tel: 760-230-2868  
In Propria Persona

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

JAMES FRANCIS MURPHY,  
Defendant,

James-Francis: Murphy

Real Party in Interest

Third Party Intervener

Authorized Representative

Case No. - 08 CR 1196 W

AMENDED JUDICIAL NOTICE OF  
ADJUDICATIVE FACTS NOTICE TO  
COURT OF HAINES v. KERNERMagistrate Judge Nita L. Stormes  
August 21, 2008 at 9:30amJudge Thomas J. Whelan  
September 8, 2008 at 2:00pm**AMENDED JUDICIAL NOTICE TO COURT of HAINES v. KERNER 404 U.S. 519 (1972)**

James-Francis: Murphy, Authorized Representative of the Defendant respectfully submits  
to this honorable court Judicial Notice of the doctrine established in Haines v. Kerner, 404  
U.S. 519 (1972) wherein substance governs over mere form of "Pro Se" litigant pleading(s).

In that land mark decision the U.S. Supreme Court stated,

"Whatever may be the limits on the scope of inquiry of courts into the internal  
administration of prisons, allegations such as those asserted by petitioner,  
however inartfully pleaded, are sufficient to call for the opportunity to offer  
supporting evidence. We cannot say with assurance that under the allegations of  
the pro se complaint, which we hold to less stringent standards than formal

pleadings drafted by lawyers, it appears [404 U.S. 519, 521] "beyond doubt that  
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1 the plaintiff can prove no set of facts in support of his claim which would entitle  
 2 him to relief." Conley v. Gibson, 355 U.S. 41, 45 -46 (1957). See Dioguardi v.  
 3 Durning, 139 F.2d 774 (CA2 1944). "Accordingly, although we intimate no view  
 4 whatever on the merits of petitioner's allegations, we conclude that he is entitled  
 5 to an opportunity to offer proof."

### 7 **Points and Authorities**

8 **Public Law 93-595, Sec. 1, Jan. 2, 1975, 88 Stat. 1930**

9 **FRE – Rule 201. Judicial Notice of Adjudicative Facts** (December 1, 2007)

10 **Title 28 -- Appendix. Rule 201.** Federal Rules of Evidence Article II. **Judicial Notice**

11 **Rule 201. Judicial Notice** of Adjudicative Facts

12  
 13 (a) Scope of rule.--This rule governs only **judicial notice** of adjudicative facts.

14 (b) Kinds of facts.--A judicially noticed fact must be one not subject to reasonable  
 15 dispute in that it is either (1) generally known within the territorial jurisdiction of the trial  
 16 court or (2) capable of accurate and ready determination by resort to sources whose  
 17 accuracy cannot reasonably be questioned.

18 (c) When discretionary.--A court may take **judicial notice**, whether requested or not.

19 (d) When mandatory.--A court shall take **judicial notice** if requested by a party and  
 20 supplied with the necessary information.

21 (e) Opportunity to be heard.--A party is entitled upon timely request to an opportunity to  
 22 be heard as to the propriety of taking **judicial notice** and the tenor of the matter noticed.  
 23 In the absence of prior notification, the request may be made after **judicial notice** has  
 24 been taken.

(f) Time of taking **notice**.--**Judicial notice** may be taken at any stage of the proceeding.

**Reynoldson v Shillinger 907 F.2d 124, 126 (10th Cir. 1990); See also Jaxon v Circle K. Corp. 773 F.2d 1138, 1140 (10th Cir. 1985) (1)**

"Pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings."

**ESTELLE, CORRECTIONS DIRECTOR, ET AL. v. GAMBLE 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251.**

"We now consider whether respondent's complaint states a cognizable 1983 claim. The handwritten pro se document is to be liberally construed. As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)."

**WILLIAM MCNEIL, PETITIONER v. UNITED STATES 113 S. Ct. 1980, 124 L. Ed. 2d 21, 61 U.S.L.W. 4468.**

"Moreover, given the clarity of the statutory text, it is certainly not a "trap for the unwary." It is no doubt true that there are cases in which a litigant proceeding without counsel may make a fatal procedural error, but the risk that a lawyer will

be unable to understand the exhaustion requirement is virtually nonexistent. Our  
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1 rules of procedure are based on the assumption that litigation is normally  
2 conducted by lawyers. While we have insisted that the pleadings prepared by  
3 prisoners who do not have access to counsel be liberally construed, see *Haines*  
4 *v. Kerner*, 404 U.S. 519 (1972); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), and  
5 have held that some procedural rules must give way because of the unique  
6 circumstance of incarceration, see *Houston v. Lack*, 487 U.S. 266 (1988) (pro se  
7 prisoner's notice of appeal deemed filed at time of delivery to prison authorities),  
8 we have never suggested that procedural rules in ordinary civil litigation should  
9 be interpreted so as to excuse mistakes by those who proceed without counsel.  
10 As we have noted before, "in the long run, experience teaches that strict  
11 adherence to the procedural requirements specified by the legislature is the best  
12 guarantee of evenhanded administration of the law." *Mohasco Corp. v. Silver*,  
13 447 U.S. 807, 826 (1980)."

14  
15 **BALDWIN COUNTY WELCOME CENTER v. BROWN** 466 U.S. 147, 104 S. Ct. 1723, 80 L.  
16 Ed. 2d 196, 52 U.S.L.W. 3751.

17 "Rule 8(f) provides that "pleadings shall be so construed as to do substantial  
18 justice." We frequently have stated that pro se pleadings are to be given a liberal  
19 construction."

20  
21 **HUGHES v. ROWE ET AL.** 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163, 49 U.S.L.W. 3346.

22 "Petitioner's complaint, like most prisoner complaints filed in the Northern District of  
23 Illinois, was not prepared by counsel. It is settled law that the allegations of such a  
24 complaint, "however inartfully pleaded" are held "to less stringent standards than  
25 formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972).  
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1 See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d  
2 994, 996 (CA7 1976). Such a complaint should not be dismissed for failure to state a  
3 claim unless it appears beyond doubt that the plaintiff can prove no set of facts in  
4 support of his claim which would entitle him to relief. *Haines*, *supra*, at 520-521. And,  
5 of course, the allegations of the complaint are generally taken as true for purposes of  
6 a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319, 322 (1972)."

#### 7 8 **STATEMENT OF FACTS**

9 In filing the initial "NOTICE TO THE COURT OF HAINES V. KERNER and LOUISVILLE & N R  
10 CO V. SCHMIDT" herein after "NOTICE" Authorized Representative may have erred by  
11 failing to include "necessary information" as set forth in Rule 201(d). Additionally by  
12 including "LOUISVILLE & N R CO V. SCHMIDT," and based upon the government's  
13 response, Authorized Representative believes the prosecution may have become confused  
14 in its response to the court, "GOVERNMENT'S RESPONSE AND OPPOSITION TO  
15 DEFENDANT'S MOTIONS TO:...", hereinafter called "OPPOSITION." Further, Authorized  
16 Representative believes the government erred in its response wherein the prosecution  
17 stated,

18 "The Government fails to recognize any cognizable claim in Defendant's Notice  
19 to Court of Invocation of Doctrine of Substance Over Mere Form. Defendant cites  
20 two cases in support of this motion, *Haines v. Kerner*, 404 U.S. 519 (1972), and  
21 *Louisville and Nashville R.R. Co. v. Schmidt*, 177 U.S. 230 (1900). Neither of  
22 these cases seem to have any import on the matter at hand."

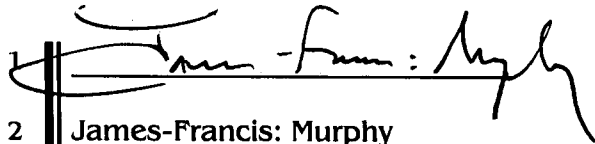
1 On its face the government's "OPPOSITION" submitted appears to presume the "NOTICE"  
2 to be a mere motion wherein they possess authority to oppose without benefit of any  
3 supporting facts or evidence.

4  
5 Based upon the language in Rule 201, Authorized Representative believes and reasonably  
6 concludes that recognition of a "Judicial Notice" before this Honorable Court is not subject  
7 to opposition by the opposing party, rather it is left to the court to decide if the "NOTICE"  
8 has any "...cognizable claim" or any "import on the matter at hand."

9  
10 It is also recognized that "Propria Persona" litigants like "Pro Se" litigants are self-  
11 represented and therefore Authorized Representative believes this Honorable Court will  
12 take cognizable claim and import on the matter at hand that each type litigant bears no  
13 difference when it comes to the "..... inartfully pleaded", and will therefore adopt the same  
14 stare decisis position of those Superior Court opinions accepting the position that the  
15 Authorized Representative must be held to "less stringent standards than formal  
16 pleadings drafted by lawyers."

17 **REMEDY REQUESTED**

18 Therefore, Authorized Representative pray's this Honorable Court, in the interest of justice  
19 and based upon the preponderance of the facts and evidence presented in this "AMENDED  
20 JUDICIAL NOTICE TO COURT of HAINES v. KERNER 404 U.S. 519 (1972)," reverse its prior  
21 ruling and accept this ""AMENDED JUDICIAL NOTICE TO COURT of HAINES v. KERNER 404  
22 U.S. 519 (1972)."

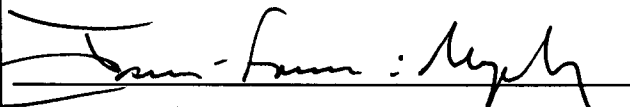
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2 James-Francis: Murphy  
3 Authorized Representative  
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5 Encinitas, California 92023-4277  
6 Tel: 760-230-2868  
7 In Propria Persona  
8

1 **CERTIFICATE OF SERVICE**

2  
3 COPY of the forgoing hand delivered,  
4 This 15th day of August, 2008, to:  
5 U. S. Assistant Attorney Fred Sheppard  
6 880 Front Street Room 6293  
7 San Diego, CA  
8 619-557-5610  
9

10  
11  
12 Service performed by:  
13

14   
15

16 James-Francis: Murphy, Authorized Representative

17 In Care of Postal Department 234277

18 Encinitas, California 92023-4277

19 Tel: 760-230-2868

20 In Propria Persona  
21